71-1596

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

No. 71-

COMMONWEALTH OF PENNSYLVANIA, *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED:	
I. Whether an order of the Interstate Commerce Commission, authorizing a railroad in reorganization to abandon a portion of its line, is reviewable in a plenary action before a three-judge district court under the Urgent Deficiencies Act (28 U.S.C. 2321-25), or must the I.C.C.'s decision be reviewed either by or upon consent of the reorganization court in the railroad's reorganization proceeding?	2
II. Whether a railroad reorganization court may direct the temporary suspension of railroad operations for a portion of the railroad pending final decision by the Interstate Commerce Commission on the carrier's application to abandon the portion of railroad	2
STATUTES INVOLVED	3
STATEMENT	3
Proceedings in the District Court	4
Proceedings in the Court of Appeals	4
Proceedings in the Supreme Court	5
ARGUMENT	6
I. THE REORGANIZATION COURT IS WITHOUT JURISDICTION TO REVIEW ABANDONMENT DECISIONS OF THE INTERSTATE COMMERCE COMMISSION OR TO PREVENT REVIEW BEFORE A STATUTORY THREE-JUDGE DISTRICT COURT	7
II. THE REORGANIZATION COURT IS WITHOUT JURISDICTION TO DIRECT THE TEMPORARY SUSPENSION OF PART OF A RAILROAD'S OPERATIONS	10

CONCLUSION 13

APPENDIX A

Order No. 445 of CNJ Reorganization Court 1a

Order No. 451 of CNJ Reorganization Court 3a

Opinion of U.S. Court of Appeals re Order No. 445 . . . . . 5a

Opinion of U.S. Court of Appeals re Order No. 451 . . . . . 7a

I.C.C. Announcement of Lehigh Valley Temporary Authority 9a

Judgment of U.S. Court of Appeals re Order No. 445 . . . . . 10a

Judgment of U.S. Court of Appeals re Order No. 451 . . . . . 12a

APPENDIX B–Statutes Involved 1b

TABLE OF CITATIONS

Cases:

Baker v. Pennsylvania, 401 U.S. 902 (1971) 9

Callaway v. Benton, 336 U.S. 132 (1949) 7

Carroll v. President and Commissioners of Princess Ann, 393 U.S. 175 (1968) 12

Chesapeake & O. Ry. Co.–Control–Western Maryland Ry. Co., 328 I.C.C. 684 (1967) 6

Chicago & N.W. Ry. Co. v. United States, 52 F. Supp. 65 (N.D. Ill. 1943), Aff'd 320 U.S. 718 (1943) 9

Commonwealth of Pennsulvania v. Interstate Commission and United States (Civil No. 71-416, U.S.D.C.–M.D.Pa.) 4

El Dorado Oil Works v. United States, 328 U.S. 12 (1946) 7

In Re Boston and Maine Corporation, 317 F. Supp. 1249 (D. Mass. 1970) 8

In Re Fonda, J. & G.R. Co., 95 F.2d 397 (2d Cir. 1938) 8

In Re Missouri Pac. R. Co., 93 F. Supp. 852 (E.D. Mo. 1950) 9

In Re New York, New Haven & Hartford Railroad Co., 289 F. Supp. 451 (D. Conn. 1968) 11

In Re Penn Central Transportation Company, 329 F. Supp. 387 (E.D. Pa. 1971) 9

In Re Penn Central Transportation Company, 325 F. F. Supp. 302 (E.D. Pa. 1971) 11

In Re Penn Central Transportation Company, 446 F.2d 1109 (3rd Cir. 1971), cert den. ___ U.S. ___, 92 S.Ct. 943, 30 L.Ed.2d 787 (1972) 9

Moore v. Ogilvie, 394 U.S. 814 (1969) 12

Myers v. Jay Street Connecting R.R., 259 F.2d 532 (2d Cir. 1958) 11

New Haven Inclusion Cases, 399 U.S. 392 (1970) 9, 11

New York Central Railroad Company v. United States, 201 F. Supp. 958 (S.D.N.Y. 1962) 11

Palmer v. Massachusetts, 308 U.S. 79 (1939) 9, 11

Pennsylvania v. United States (No. 70-1156, W.D. Pa.) vacated as moot 401 U.S. 902 (1971) 9

Pennsylvania R. Co.–Merger–New York Central R. Co., 327 I.C.C. 475 (1966) 6

Penn Central Merger Cases, 389 U.S. 486 (1968) 6

Reading Co.–Purchase–Lehigh & S.R. System, 317 I.C.C. 633 (1963) 6

Schwartz v. Bowman, 244 F. Supp. 51 (S.D.N.Y. 1965), aff'd sub nom. Annenberg v. Allegheny Corp. 360 F.2d 211 (2d Cir. 1966), cert. den. sub nom. Schwartz v. Eaton, 385 U.S. 921, (1966) 8

Smith v. Hoboken R. Co., 328 U.S. 123 (1946) 10, 11

Southern Pacific Terminal Co. v. I.C.C., 219 U.S. 498 (1911) 12

Tampa Phosphate R. Co. v. Seaboard Coast Line R. Co., 418 F.2d 387 (5th Cir. 1969), cert. den. 398 U.S. 910 (1970) 8

Thompson v. Texas Mexican R. Co., 328 U.S. 134 (1946) 7,11

Warren v. Palmer, 310 U.S. 132 (1940) 10

IN THE

Supreme Court of the United States

No. 71-

COMMONWEALTH OF PENNSYLVANIA, *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The Petitioners, Commonwealth of Pennsylvania, Pennsylvania Public Utility Commission, and United Transportation Union,[1] respectfully pray that a writ of certiorari issue to review the judgments and opinions of the United States Court of Appeals for the Third Circuit, entered in this proceeding on March 10, 1972.

OPINIONS BELOW

Orders No. 445 and 451 of the reorganization court for The Central Railroad Company of New Jersey

[1] A labor organization representing the majority of train service employees of The Central Railroad Company of New Jersey (CNJ).

(CNJ),[2] are not reported. (App. 1a-4a). The opinions of the U.S. Court of Appeals for the Third Circuit, entered March 10, 1972, are not reported. (App. 5a-8a). The judgments of the Court of Appeals are set forth in the Appendix (App. 10a-13a).

JURISDICTION

The judgments of the U.S. Court of Appeals for the Third Circuit were entered March 10, 1972. (App. 10a-13a). This Court's jurisdiction is invoked under 28 U.S.C. 1254(1), 2101(c).

QUESTIONS PRESENTED

1. Whether an order of the Interstate Commerce Commission, authorizing a railroad in reorganization to abandon a portion of its line, is reviewable in a plenary action before a three-judge district court under the Urgent Deficiencies Act (28 U.S.C. 2321-25), or must the I.C.C.'s decision be reviewed either by or upon consent of the reorganization court in the railroad's reorganization proceeding?

2. Whether a railroad reorganization court may direct the temporary suspension of railroad operations for a portion of the railroad pending final decision by the Interstate Commerce Commission on the carrier's application to abandon the portion of railroad.

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[2]No. B 401-67, U.S.D.C.-D.N.J. *In Re The Central Railroad Company of New Jersey.* Order No. 445 was filed December 20, 1971; Order No. 451 was filed January 11, 1972.

STATUTES INVOLVED

The statutes involved are section 1(18)-(20) of the Interstate Commerce Act, 49 U.S.C. 1(18)-(20), section 77(o) of the Bankruptcy Act, 11 U.S.C. 205(o), and sections 1398(a) and 2325 of the Judicial Code, 28 U.S.C. 1398(a), 2325, and are set forth in Appendix B.

STATEMENT

This petition involves two orders of a railroad reorganization court which were affirmed by the U.S. Court of Appeals. The Central Railroad Company of New Jersey (CNJ), a railroad in reorganization under section 77 of the Bankruptcy Act in the U.S. District Court for the District of New Jersey, on May 25, 1971 filed 30 applications with the Interstate Commerce Commission (I.C.C.) for permission to abandon various lines situated in the Commonwealth of Pennsylvania and in the State of New Jersey. The 30 applications[3] were filed under section 1(18)-(20) of the Interstate Commerce Act, 49 U.S.C. 1(18)-(20). Together, the proposals embrace 375.59 miles of CNJ operations, of which 235.75 miles are in Pennsylvania (constituting CNJ's entire operations in Pennsylvania), and 139.84 miles are in New Jersey.

Ten of these applications—5 in New Jersey and 5 in Pennsylvania—were summarily approved by the I.C.C. on August 20, 1971. An action for judicial review of these 10 abandonments was instituted pursuant to the three-judge court provisions of 28 U.S.C. 1336(a), 2284, 2321-25, in the U.S. District Court for the Middle District of Pennsylvania by Commonwealth of Pennsylvania, Pennsylvania Public Utilities Commission, and

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[3] Finance Docket No. 26659 and Sub-Nos. 1-29.

various labor organizations.[4] The operation of these 10 abandonment orders was stayed pending agency reconsideration, which petitions for reconsiderations were denied by final orders dated November 23 and served December 15, 1971.

The remaining 20 line abandonment applications were the subject of oral hearing by the I.C.C., which concluded December 14, 1971.

Proceedings in the District Court

The CNJ reorganization court held a hearing on December 15, 1971. The court directed CNJ's trustee to temporarily suspend on April 1, 1972 all operations in the Commonwealth of Pennsylvania, pending final decision by the I.C.C. on the abandonment applications. In addition, the court enjoined all state government agencies and other persons from instituting or maintaining any action or proceeding affecting the abandonment of operations in Pennsylvania in any other court, or without first obtaining leave of the CNJ reorganization court to do so. The court's formal order, No. 445, was filed December 20, 1971. (App. 1a-3a).

Later, on January 11, 1972, the CNJ reorganization court entered Order No. 451, authorizing CNJ's trustee to implement the 10 abandonment orders of the I.C.C. (App. 3a-4a).

Proceedings in the Court of Appeals

The Court of Appeals stayed the operation of Order No. 451, which otherwise would have permitted the 10 abandonments, and consolidated the appeals from both

[4]Civil No. 71-416, *Commonwealth of Pennsylvania, et al. v. United States and Interstate Commerce Commission* (U.S.D.C.-M.D.Pa.), filed September 24, 1971.

orders with two other orders.[5] There were a number of participants below.[6]

The Court of Appeals heard extensive argument. Its opinions and judgments were entered March 10, 1972, affirming the district court decisions in all respects. (App. 5a-8a).

Proceedings in the Supreme Court

The Court of Appeals on March 22, 1971, denied motions for stay of CNJ's temporary suspension of operations in Pennsylvania, scheduled to become effective April 1, 1972, and also denied a stay of the 10 abandonments earlier authorized by the I.C.C. Thereafter, applications were presented on March 23, 1971 to Mr. Justice Brennan by petitioners (A-987) and by Reading Company (A-988).

The I.C.C. the following day, March 24, 1972, issued emergency orders authorizing Lehigh Valley Railroad Company temporarily to take over all operations of CNJ throughout Pennsylvania as of April 1, 1972.[7] (App. 9a).

[5] Order No. 441 of the CNJ reorganization court, and Order No. 61 of the Lehigh Valley reorganization court. (Bank. No. 70-432, U.S.D.C.-E.D.Pa.)

[6] Parties filing briefs or memoranda in the U.S. Court of Appeals included CNJ, United States of America, I.C.C. (amicus), Reading, Lehigh Valley, State of New Jersey, Lehigh Coal & Navigation Company, Tenneco Chemicals, Inc. (amicus), Manufacturers Hanover Trust Company, 3¼% Mortgage Bondholders' Protective Committee, United Transportation Union, and jointly by Commonwealth of Pennsylvania and Pennsylvania Public Utility Commission.

[7] Lehigh Valley has an application on file to acquire all of CNJ's operations in Pennsylvania upon abandonment by CNJ. Similar applications have been filed by Reading Company, owner of the

The Applications for Stay were referred to Mr. Justice Stewart, and by him denied on March 27, 1972.

ARGUMENT

The Third Circuit has decided important questions of federal law which conflict with applicable decisions of this Court, and which should be settled by this Court. A number of major eastern railroads are in reorganization under section 77 of the Bankruptcy Act, within the Third Circuit. Among these railroads are Penn Central Transportation Company (Bank. No. 70-347, E.D.Pa.), Lehigh Valley Railroad Company (Bank. No. 70-432, E.D.Pa.), Reading Company (Bank. No. 71-828, E.D.Pa.), and CNJ, the carrier involved in this petition for certiorari.

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fee of CNJ's line in Pennsylvania. *Reading Co.–Purchase–Lehigh & S.R. System*, 317 I.C.C. 633 (1963). Lehigh Valley is a subsidiary of Penn Central, the latter being required to maintain Lehigh Valley operational as a condition to consummation of the Penn-Central merger. *Pennsylvania R. Co.–Merger–New York Central R. Co.*, 327 I.C.C. 475, 554-55 (1966). Lehigh Valley petitioned for reorganization following Penn Central's entry into reorganization, pursuant to section 77(a) of the Bankruptcy Act, 11 U.S.C. 205(a), and requested reorganization as part of Penn Central's plan of reorganization, under the supervision of U.S. District Judge John P. Fullam. Reading has controlled CNJ for many years, and is itself part of the C&O-B&O system. *Penn-Central Merger Cases*, 389 U.S. 486, 519 (1968); *Chesapeake & O. Ry. Co.–Control–Western Maryland Ry. Co.*, 328 I.C.C. 684, 707-9 (1967). Commonwealth of Pennsylvania and Pennsylvania Public Utility Commission oppose withdrawal by CNJ from Pennsylvania, but if such abandonment is permitted, prefer Reading's applications and strongly oppose that of Lehigh Valley.

I. THE REORGANIZATION COURT IS WITHOUT JURISDICTION TO REVIEW ABANDONMENT DECISIONS OF THE INTERSTATE COMMERCE COMMISSION OR TO PREVENT REVIEW BEFORE A STATUTORY THREE-JUDGE DISTRICT COURT.

The CNJ reorganization court's order requires that persons (other than federal agencies) seek its permission before suing to set aside I.C.C. line abandonment orders.[8] Yet it is clear from decisions of this Court that Congress did not give reorganization courts exclusive jurisdiction over all controversies that in some way may affect the debtor's estate. *Callaway v. Benton*, 336 U.S. 132, 142 (1949); *Thompson v. Texas Mexican R. Co.*, 328 U.S. 134 (1946).

The Commission's decision to allow the 10 abandonments was entered under the provisions of the Interstate Commerce Act, and review of its decision must be in a statutory court composed of three judges. 28 U.S.C. 2321-25. Indeed, the Supreme Court decided this question in *Thompson v. Texas Mexican R. Co., supra*, a case involving a railroad in reorganization under section 77 of the Bankruptcy Act. The Court stated, 328 U.S. at 151, fn. 11:

> If the [abandonment] order of the Commission were challenged, its review could of course be had *only* in the manner provided by statute. See *El Dorado Oil Works v. United States*, 328 U.S. 12. (emphasis supplied)

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[8] The Court in fact denied permission to maintain the action in the Middle District of Pennsylvania on January 10, 1972, the day prior to entry of Order No. 451 which implemented the 10 I.C.C. abandonment orders.

Reference to the *El Dorado* case clearly indicates that orders of the I.C.C. are to be reviewed by a district court of three judges. 328 U.S. 12 at 19.

A statutory three-judge court is the exclusive and sole method for review of I.C.C. abandonment orders entered under section 1(18)-(20) of the Interstate Commerce Act. *Tampa Phosphate R. Co. v. Seaboard Coast Line R. Co.*, 418 F.2d 387, 398-400 (5th Cir. 1969), cert. den. 398 U.S. 910; *Schwartz v. Bowman*, 244 F. Supp. 51, 64-68 (S.D.N.Y. 1965), aff'd sub nom. *Annenberg v. Allegheny Corp.*, 360 F.2d 211 (2nd Cir. 1966), cert. den. sub nom. *Schwartz v. Eaton*, 385 U.S. 921.

Section 77(o) of the Bankruptcy Act provides that the trustee initially determine whether to apply for a line abandonment. The reorganization court is concerned solely with the financial advantages or disadvantages to the debtor. Public interest questions are for the regulatory agency. *In Re Fonda, J. & G. R. Co.*, 95 F.2d 397, 400 (2d Cir. 1938):

> . . . the District Judge need only consider the financial advantages or disadvantages to the debtor corporation's estate in the event that permission to abandon shall be granted by the appropriate regulatory bodies.

The court stated in *In re Boston and Maine Corporation*, 317 F. Supp. 1249, 1252 (D. Mass. 1970), that the reorganization court should be "concerned only with the economic effect of the abandonment on the debtor's estate and reorganization, and that questions of the effect on public interest are to be left to the Interstate Commerce Commission."

In an analogous situation, involving passenger train abandonments, the Third Circuit stated that "matters relating to train discontinuances are not ordinarily heard by the reorganization court." *In re Penn Central Trans-*

portation Company, 446 F.2d 1109, 1113 (3rd Cir. 1971), cert den. ___ U.S. ___ (1972). The District Judge in that case had distinguished orders of the I.C.C., which require review in a statutory three-judge court, from the situation under Rail Passenger Service Act of 1970,[9] where an order of the I.C.C. is not involved. *In Re Penn Central Transportation Company*, 329 F. Supp. 387, 389 (E.D. Pa. 1971). Further, a three-judge district court in the Third Circuit denied a motion by Penn Central's trustee to transfer a passenger train abandonment case to the Penn Central reorganization court. *Pennsylvania v. United States* (W.D. Pa. Civil No. 70-1156), vacated as moot sub nom. *Baker v. Pennsylvania*, 401 U.S. 902 (1971).

An exception to the rule that I.C.C. abandonment orders are reviewed in three-judge courts, is where the abandonments are considered by the I.C.C. together and as part of the plan of reorganization under section 77(e) and 77(f) of the Bankruptcy Act. *Chicago & N.W. Ry. Co. v. United States*, 52 F. Supp. 65 (N.D. Ill. 1943), aff'd 320 U.S. 718; *New Haven Inclusion Case*, 399 U.S. 392, 429 (1970); *In Re Missouri Pac. R. Co.*, 93 F. Supp. 852, 863 (E.D. Mo. 1950); cf. *Palmer v. Massachusetts*, 308 U.S. 79, 88 (1939). At the request of CNJ, the Commission has deferred hearings on CNJ's plan of reorganization, and has declined to consolidate the abandonments with the plan of reorganization.

Abandonment decisions of the I.C.C. have a national and widespread interest, and are not confined to the particular railroad proposing the abandonment. This is because the Nation's railroads offer a unified system of rail transportation, with standard track gauge, joint through rates, and interchange of traffic without transfer

[9] 45 U.S.C. 501.

of lading. Accordingly, the abandonment of a segment of CNJ in Pennsylvania will affect the national rail network.

If the ruling below is not reversed, it is anticipated that the Third Circuit will accord similar treatment to line abandonment decisions of the I.C.C. for other railroads. This would seriously impair the effective workings of the I.C.C., and would deprive the Commonwealth of Pennsylvania of an independent tribunal for review of line abandonment decisions.

The question presented is of pressing importance to the orderly administration of line abandonments between reorganization courts and the Interstate Commerce Commission, and the respective spheres of responsibility.

II. THE REORGANIZATION COURT IS WITHOUT JURISDICTION TO DIRECT THE TEMPORARY SUSPENSION OF PART OF A RAILROAD'S OPERATIONS.

The CNJ reorganization court was without authority to order CNJ's trustee to temporarily suspend operations in Pennsylvania on April 1, 1972. Such a suspension occurred on April 1, 1972, and was highly prejudicial to the outcome of the I.C.C. proceedings.[10] The court's order was an attempt to dictate the I.C.C. decision.

It is settled that a discontinuance of operation is an abandonment within the meaning of section 1(18)-(20) of the Interstate Commerce Act, and requires prior I.C.C. approval. *Smith v. Hoboken R. Co.*, 328 U.S. 123, 130 (1946); *Warren v. Palmer*, 310 U.S. 132, 137-38 (1940);

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[10] The I.C.C. on May 26, 1972 (served June 2) concluded to authorize CNJ's abandonment in Pennsylvania, subject to conditions. The I.C.C. order is not yet effective, is subject to petitions for reconsideration, and ultimate judicial review.

Thompson v. Texas Mexican R. Co., 328 U.S. 134, 144-45 (1946).

The courts will enjoin attempts to "temporarily suspend" on the ground of financial poverty. *Myers v. Jay Street Connecting R.R.*, 259 F.2d 532 (2d Cir. 1958); *New York Central Railroad Company v. United States*, 201 F. Supp. 958 (S.D.N.Y. 1962). To the extent that a temporary suspension of operation is governed by State law, the reorganization court cannot evade such law except as part of a complete plan of reorganization. *Palmer v. Massachusetts*, 308 U.S. 79, 88 (1939).

There is no finding below of an unconstitutional taking of property, but even if a finding were made, it would not authorize the suspension of a *portion* of a railroad operation, for that decision rests with the Interstate Commerce Commission. Questions of an unconstitutional taking of property are decided in connection with the plan of reorganization. *In Re Penn Central Transportation Company*, 325 F. Supp. 302 (E.D. Pa. 1971). The threatened shutdown of the former New Haven was made in connection with a motion to dismiss the proceeding, pursuant to section 77(e) and 77(g) of the Bankruptcy Act. *In Re New York, New Haven & Hartford Railroad Co.*, 289 F. Supp. 451, 459 (D. Conn. 1968). However, this Court warned of the risks an investor takes in railroad securities. *New Haven Inclusion Cases*, 399 U.S. 392, 491 (1970).

The CNJ reorganization court has attempted to decide the line abandonments in advance of the final I.C.C. determination. As such, the court interferes with the agency functions. This Court stated in *Smith v. Hoboken R. Co.*, 328 U.S. 123, 130 (1946):

> The point is that if the reorganization court decrees a forfeiture in advance of consideration of the problem by the Commission, it interferes with the functions entrusted to the Commission under section 77.

The question of a reorganization court's power to order a "temporary suspension" of operations is of great importance to the administration of railroads in reorganization. We believe one commentator has summed up a real danger:[11]

> The other possibility is that the roads will simply stop operating. Now that Judge Augelli has shown how to get around I.C.C. and state restrictions, rail analysts are wondering what would happen if Judge J. William Ditter, who has responsibility for the Reading, should tell it to stop operating unprofitable routes and Judge Fullam should say the same to the Lehigh and the Penn Central. The chaos that would result would be enormous.

The question presented is substantial and is likely to recur. *Southern Pacific Terminal Co. v. I.C.C.*, 219 U.S. 498, 515 (1911); *Carroll v. President and Commissioners of Princess Ann*, 393 U.S. 175, 179 (1968); *Moore v. Ogilvie*, 394 U.S. 814 (1969).

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[11] *Business Week*, No. 2230, May 27, 1972, at pp. 72-73.

CONCLUSION

For these reasons, the Court should issue a writ of certiorari to review the judgments and opinions of the Third Circuit.

Respectfully submitted,

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June, 1972

APPENDIX A

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

In the Matter of	)	
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY	)	In Proceedings for the Reorganization of a Railroad
Debtor.	)	No. B 401-67
	)	ORDER NO. 445

[Filed December 20, 1971]

R. D. TIMPANY, Trustee of the property of the Debtor, having filed a verified petition seeking instructions; and the matter having come on for a hearing which was duly noticed; and the Court having considered the verified petition, the affidavits of the Trustee and Robert Frederickson, other evidence offered by the parties at the hearing, and matters of record in the proceeding; and all parties in interest having been given the opportunity to cross-examine, to introduce evidence and to be heard; and good cause appearing,

IT IS, on this 20th day of December, 1971,

ORDERED, that the Trustee be and he hereby is directed to temporarily suspend on April 1, 1972 all operations of the Debtor in the Commonwealth of Pennsylvania pending final decision by the Interstate Commerce Commission on the abandonment application in Finance Docket No. 26659, et al.; and it is

FURTHER ORDERED, that in the event the aforementioned abandonment application is denied by the Interstate Commerce Commission or any court in whole (or in any respect which this Court shall find, after application on 10 days notice and hearing, shall not be in the best inerest of the Debtor's estate) the Trustee be and he hereby is directed to cease all operations of the Debtor; and it is

FURTHER ORDERED, that all parties and all other persons including therein all firms, corporations, state and local (but not federal) governmental entities (their departments, agencies, officers, agents and employees) and anyone in privy, concert or participation with any such parties or persons having notice or knowledge of the entry of this Order are severally enjoined and restrained from instituting or maintaining any action or proceeding affecting the operations (or the cessation or abandonment thereof) of the Debtor in the Commonwealth of Pennsylvania in any court other than this Court, or without first obtaining leave of this Court to do so; except that nothing contained herein shall be construed in any manner whatsoever (a) to affect the right of anyone to institute or proceed with any proceeding in any other railroad reorganization pending in any other jurisdiction and (b) to affect the right of anyone to seek any proper appeal or other review of the within Order in the United States Circuit Court of Appeals for the Third Circuit; and it is

FURTHER ORDERED, that the Trustee be and he hereby is authorized to draw down as needed the $1,000,000 referred to in the aforementioned Petition for Instructions and to utilize such funds for operations in accordance with the above directions; and it is

FURTHER ORDERED, that this Court hereby reserves jurisdiction of the subject matter of the within Order; and it is

FURTHER ORDERED, that a copy of this Order be served upon all intervenors in this Reorganization Proceeding, all persons participating in the hearing on the Petition for Instructions, and all persons party to the aforementioned abandonment proceedings before the Interstate Commerce Commission.

/s/ Anthony T. Augelli
C.J. U.S.D.C.

ORDER NO. 451

ORDER AUTHORIZING ABANDONMENT OF CERTAIN LINES AND OPERATIONS

[Filed January 11, 1972]

R. D. TIMPANY, Trustee of the property of the Debtor, having filed on May 7, 1971 a verified petition for Authority to Abandon Certain Lines and Operations and To Sell; and the Court by Order No. 408 having directed notice with respect to same; and the Court by Order No. 410, after hearing on the aforementioned petition, having authorized the Trustee to verify and file with the Interstate Commerce Commission an abandonment application, the Court reserving jurisdiction; and the Interstate Commerce Commission having entered orders bearing service date of August 24, 1971 with respect to ten of the lines and operations involved; and the Trustee having on September 7, 1971 filed a further verified petition seeking an order authorizing the abandonment of those ten lines and operations as detailed in

the petition and the orders of the Interstate Commerce Commission attached thereto; and the Interstate Commerce Commission subsequently having by order bearing service date of November 26, 1971 modified one of the ten orders attached to the aforementioned verified petition of the Trustee of September 7, 1971; and the matter having come on for hearing which was duly noticed; and all parties in interest having been given the opportunity to cross examine the Trustee, to introduce evidence and to be heard; and the Court having considered the record before it and the arguments of counsel; and good cause appearing, it is on this 11th day of January, 1972,

ORDERED that the Trustee be and he hereby is authorized to abandon the lines and operations set forth in his verified petition of September 7, 1971 and specifically referred to in the orders of the Interstate Commerce Commission attached thereto and as modified by the Interstate Commerce Commission order bearing service date of November 26, 1971; and it is further

ORDERED that the Trustee be and he hereby is authorized to take any and all steps necessary to carry out the foregoing.

ANTHONY T. AUGELLI,
C.J.U.S.D.C.

/s/ Anthony T. Augelli

C.J.U.S.D.C.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 71-2163, 72-1050 and 72-1051

In the Matter of
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, *Debtor*

COMMONWEALTH OF PENNSYLVANIA and PENNSYLVANIA PUBLIC UTILITY COMMISSION,
Appellants in No. 71-2163

READING COMPANY,
Appellant in No. 72-1050

UNITED TRANSPORTATION UNION,
Appellant in No. 72-1051

(Appeals from D. C. Order No. 445)

(D. C. No. B-401-67 In Bankruptcy)

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Argued March 9, 1972

Before MCLAUGHLIN, VAN DUSEN and ALDISERT, *Circuit Judges*

OPINION OF THE COURT

(Filed March 10, 1972)

PER CURIAM:

We have carefully considered all the contentions presented by the various Appellants by briefs and oral argument in these expedited appeals. We do not find them persuasive to require that Order No. 445 of the Bankruptcy Court be vacated.

The Order No. 445 of the Bankruptcy Court will be affirmed.

A True Copy :

Teste :

Clerk of the United States Court of Appeals for the Third Circuit.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 72-1023

In the Matter of
THE CENTRAL RAILROAD COMPANY OF
NEW JERSEY, *Debtor*

COMMONWEALTH OF PENNSYLVANIA and
PENNSYLVANIA PUBLIC UTILITY COMMISSION,
Appellants

(Appeal from D. C. Order No. 451)

(D. C. No. B-401-67 In Bankruptcy)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Argued March 9, 1972

Before McLAUGHLIN, VAN DUSEN and ALDISERT, *Circuit Judges*

OPINION OF THE COURT

(Filed March 10, 1972)

PER CURIAM:

We have carefully considered all the contentions presented by the various Appellants by briefs and oral argument in this expedited appeal. We do not find them

persuasive to require that Order No. 451 of the Bankruptcy Court be vacated.

The Order No. 451 of the Bankruptcy Court will be affirmed.

A True Copy :

Teste :

Clerk of the United States Court of Appeals for the Third Circuit.

INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C. 20423

For Release: Immediate
Friday, March 24, 1972 No. 120-72

LEHIGH VALLEY GIVEN EMERGENCY AUTHORITY TO TAKE OVER CNJ OPERATIONS IN PENNSYLVANIA

The Commission today issued an emergency service order (No. 1094) authorizing the Lehigh Valley Railroad Company to take over all operations of the Central Railroad of New Jersey throughout Pennsylvania as of April 1, 1972. Today's order was made necessary by an embargo imposed by the CNJ preliminary to cessation of operations in Pennsylvania as of April 1. The purpose of this order is to insure continuous service to, from and through Pennsylvania over the lines now being operated by the Central of New Jersey.

The Commission has under active consideration an application of the Central Railroad of New Jersey for emergency authority to interchange traffic with various railroads over routes which by-pass the lines it has been operating in Pennsylvania. Action on the application is anticipated shortly.

Following today's action by the Commission, the Central of New Jersey presumably will retire from its operation in Pennsylvania pursuant to its embargo notices and directives from the governing reorganization court. However, it still will be required to leave intact certain facilities essential to the safe operations and control of movement over the track, including train control and signal devices.

* * * * *

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 71-2163, 72-1050 and 72-1051

In the Matter of
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, debtor

Commonwealth of Pennsylvania and
Pennsylvania Public Utility Commission,
Appellants in No. 71-2163

Reading Company, Appellant in No. 72-1050

United Transportation Union, Appellant in No. 72-1051

(Appeals from D.C. Order No. 445)
(D.C. No. B-401-67 In Bankruptcy)

ON APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Present: McLaughlin, Van Dusen and Aldisert, *Circuit Judges.*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that Order 445 of the said District

Court, filed December 20, 1971, be, and the same is hereby affirmed. Costs taxed against Appellants.

ATTEST:

/s/ Thomas Quinn
Clerk

Dated: March 10, 1972
Certified as a true copy and
issued in lieu of a formal
mandate on March 22, 1972.

Test: Thomas F. Quinn
Clerk, United States Court
of Appeals for the
Third Circuit.

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 72-1023

In the Matter of
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Debtor

Commonwealth of Pennsylvania and
Pennsylvania Public Utility Commission,
Appellants

(Appeal from D.C. Order No. 451)
(D.C. No. B-401-67 In Bankruptcy)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Present: McLaughlin, Van Dusen and Aldisert, *Circuit Judges.*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that Order No. 451 of the said

District Court, filed January 11, 1972, be, and the same is hereby affirmed. Costs taxed against Appellants.

ATTEST:

/s/ Thomas F. Quinn
Clerk

Dated: March 10, 1972
Certified as a true copy and
issued in lieu of a formal
mandate on March 22, 1972.

Test: Thomas F. Quinn
Clerk, United States Court
of Appeals for the
Third Circuit.

APPENDIX B

Section 1(18)-1(20) of the Interstate Commerce Act, 49 U.S.C. 1(18)-1(20):

(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this part shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this part over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this part shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment. Nothing in this paragraph or in section 5 shall be considered to prohibit the making of contracts between carriers by railroad subject to this part, without the approval of the Commission, for the joint ownership or joint use of spur, industrial, team, switching, or side tracks.

(19) The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the Commission may from time to time prescribe, and the provisions of this part shall apply to all such proceedings. Upon receipt of any application for such certificate the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or

the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates.

certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both.

Section 77(o) of the Bankruptcy Act, 11 U.S.C. 205(o):

(o) The trustee or trustees, from time to time, shall determine what lines or portions of lines of railroad and

what other property of the debtor, if any, should be abandoned or sold during the pendency of the proceedings in the interest of the debtor's estate and of ultimate reorganization but without unduly or adversely affecting the public interest, and shall present to the judge petitions, in which other parties in interest may join, for authority to abandon or to sell any such property; and upon order of the judge made after a hearing pursuant to such reasonable notice by publication or otherwise as the judge may direct to parties in interest, authorizing any such abandonment or sale, but only with the approval and authorization of the Commission when required by the Interstate Commerce Act as amended February 28, 1920, or as it may be hereafter amended, the trustee or trustees shall take all steps and carry out all proceedings necessary for the consummation of any such abandonment or sale in accordance with the order of the judge. Any such order of the judge shall be a final order for the purposes of appeal. The judge may order and decree any sale of property, whether or not incident to an abandonment, under this subsection at public or private sale and subject to or free from liens. The proceeds derived from any such sales shall be received by the trustee or trustees subject, in case the property was sold free from lien, to any liens thereon at the time of sale, and shall be applied or disposed of in such manner as the judge by further order shall direct. The expense of such sale shall be borne in such manner as the judge may determine to be equitable. The judge may order the trustee or trustees of the debtor to deposit such proceeds with any mortgage trustee entitled thereto, to be applied in payment of all or part of such mortgage.

Judicial Code, Title 28:

SEC. 1398. [*As codified June 25, 1948, August 30, 1964.*] [*28 U. S. C. § 1398.*] INTERSTATE COMMERCE COMMISSION'S